



BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE
APPLICATION OF ARIZONA
WATER COMPANY TO EXTEND
ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY
IN CASA GRANDE, PINAL
COUNTY, ARIZONA.

DOCKET NO. W-01445A-03-0559

**CORNMAN TWEEDY 560, LLC'S
APPLICATION FOR REHEARING
AND RECONSIDERATION OF
DECISION 69722**

Pursuant to A.R.S. §40-253 and A.A.C. R14-3-111, Cornman Tweedy 560, LLC ("Cornman Tweedy")¹ hereby submits its Application for Rehearing and Reconsideration (the "Application") of Decision 69722 (July 30, 2007) on two grounds. First, Cornman Tweedy is concerned that a party may try to argue in the remanded proceeding that *James P. Paul Water Company v. Arizona Corporation Commission*, 137 Ariz. 426, 671 P.2d 404 (1983) ("*James P. Paul*") limits the Arizona Corporation Commission's review of Decision 66893 to whether Arizona Water Company ("AWC") can provide adequate service to the Cornman Tweedy property at reasonable rates, thereby subverting the Commission's stated and unanimous desire to "*develop a record [broad in scope] to consider the overall public interest underlying service to the Cornman property that is included in the extension area granted by Decision No. 66893.*"² Decision 69722 at 4, lines 23-26. Specifically, Decision 69722 clearly sets forth the Commission's concern that "there may not be a current need or necessity for water service in the portions of the extension area that are owned by Cornman" and recognizes that Cornman Tweedy "does not wish to have its property included in Arizona Water's CC&N at this time." *Id.* at lines

¹ Cornman Tweedy is a subsidiary of Robson Communities, Inc.

² Cornman Tweedy does not concede that *James P. Paul* limits the issues the Commission may consider on remand under A.R.S. §40-252.

1 1-5. Second, the conditions of Decision 66893 have not been fulfilled with respect to the
2 Cornman Tweedy property and to conclude otherwise is contrary to the record in this
3 case.

4 If the Commission has concerns that *James P. Paul* may prevent the Commission
5 from conducting a remand proceeding "broad in scope" as intended by the Commission,
6 then the Commission should grant the relief requested herein and amend Decision 69722
7 by: (i) granting AWC's application for an extension of time for the requested CC&N
8 extension area except for the Cornman Tweedy property, consistent with Staff's
9 recommendation in this case;³ (ii) finding that AWC has not fulfilled the conditions of
10 Decision 66893 with respect to the Cornman Tweedy property, consistent with Staff's
11 position in this case;⁴ and (iii) remanding the existing deadline extension case (rather than
12 remanding under A.R.S. §40-252) for further evidentiary hearings to consider the broader
13 public interest implications of integrated water and wastewater providers, the weight to be
14 accorded the wishes of landowners regarding utility service, dividing master planned
15 developments between two or more utility providers, and whether there remains a
16 continuing need and necessity for utility service.

17 A. **IF JAMES P. PAUL APPLIES TO LIMIT THE ISSUES IN THIS**
18 **CASE, THE COMMISSION'S DESIRE TO CONSIDER BROADER**
19 **PUBLIC INTERESTS ON REMAND WILL BE SUBVERTED AND**
CORNMAN TWEEDY WILL BE IRREPARABLY HARMED

20 In *James P. Paul*, the Arizona Supreme Court defined the circumstances under
21 which the Commission may delete territory from a CC&N. James P. Paul Water
22 Company ("Paul Water Company") was granted a CC&N to provide water service to
23 several sections of largely undeveloped land in Maricopa County, including
24 approximately 240 acres that was the subject of the case. Pinnacle Paradise Water

25 ³ In Staff's Opening Brief in this case, Staff legal counsel stated that "If the Commission grants
26 AWC a time extension in this case, it is Staff's position that the time extension should not include
27 the Cornman Tweedy property." Staff's Opening Brief (Sept. 15, 2006) at 3, lines 10-11.

28 ⁴ Staff's Response Brief in this case states that "Staff's intent was that the certificate of assured
water supply and main extension agreement should be submitted for the two developments that
were part of the extension. ... Thus, Staff disagrees with AWC's assertion that it has complied
with Decision No. 66893." Staff's Response Brief (Oct. 6, 2006) at 3, lines 19-24.

1 Company ("PPWC") held a CC&N to provide water service to an area adjacent to the
2 240 acres. PPWC filed a petition with the Commission to delete the 240 acres from Paul
3 Water Company's CC&N and the Commission granted the petition. Paul Water Company
4 was not providing service to the 240 acres nor had it constructed any facilities to serve the
5 property since no demand for service had been made by the owner of the property. The
6 owner of the 240 acres was also a 50% owner of PPWC. PPWC had facilities in an area
7 adjacent to the 240 acres and could have extended its facilities at a relatively low cost.

8 The Arizona Supreme Court held in favor of Paul Water Company, ruling that the
9 "public interest is the controlling factor in decisions concerning service of water by water
10 companies." *James P. Paul* at 429. In applying the public interest standard in *James P.*
11 *Paul*, the court stated that "[o]nce granted, the certificate confers upon its holder an
12 exclusive right to provide the relevant service for as long as the grantee can provide
13 adequate service at reasonable rates." *Id.*

14 In Decision 69722, the Commission concluded (contrary to the record in this case,
15 as discussed below) that the conditions of Decision 66893 were fulfilled, thereby making
16 AWC's CC&N extension unconditional. Cornman Tweedy believes that a party may
17 argue in the remand preceding that *James P. Paul* applies, and that with the conditions of
18 the CC&N satisfied, the Commission is now precluded from considering any issue other
19 than the very narrow issue of whether AWC can provide adequate service to the Cornman
20 Tweedy property at reasonable rates.⁵ If applicable in this case, *James P. Paul* would
21 likely prevent the Commission from considering all of the broader public interests that
22 were discussed in Decision 69722 and at the Open Meetings held June 27 and July 24,
23 2007, including (i) the benefits of integrated water and wastewater providers versus stand-
24 alone providers; (ii) the proper weight to be accorded the wishes of property owners in
25 determining what utility providers will serve their properties; (iii) the implications of
26 splitting master-planned communities between one or more providers; and (iv) how to

27 ⁵ AWC has already expressed its willingness to serve the Cornman Tweedy property. Thus, if the
28 proceeding is limited to the narrow issue of whether AWC can provide adequate service at
reasonable rates, it would be pointless to even proceed with the remand proceeding.

1 proceed when circumstances change and there is no longer a demonstrated need and
2 necessity for utility service. If *James P. Paul* applies, the Commission's ability to discuss
3 these critical policy issues in this case may be lost, which would irreparably harm
4 Cornman Tweedy and subvert the Commission's clear wishes as set forth in Decision
5 69722.

6 To remove all doubt and ensure that the Commission retains the legal ability to
7 conduct a remand proceeding "broad in scope," the Commission should modify Decision
8 69722 by deferring a decision on whether the conditions of the CC&N have been fulfilled
9 with respect to the Cornman Tweedy property until after the remand hearing has
10 concluded. This approach would maintain the *status quo* (after all, AWC filed its request
11 for an extension of the compliance deadline more than two years ago and there is still no
12 need for water service in the foreseeable future), and would not prejudice AWC or
13 Cornman Tweedy. This approach would also recognize the fact that AWC has not
14 fulfilled the conditions of Decision 66893 with respect to the Cornman Tweedy property,
15 as discussed below.

16 It should also be noted that Staff recommended outright denial of AWC's request
17 for an extension of the deadline with respect to the Cornman Tweedy property. Staff legal
18 counsel stated in Staff's post hearing Opening Brief that "[i]f the Commission grants
19 AWC a time extension in this case, it is Staff's position that the time extension should not
20 include the Cornman Tweedy property." Staff's Opening Brief at 3, lines 10-11 (emphasis
21 added). At a minimum, the Commission should defer a decision on AWC's compliance
22 with the conditions of Decision 66893 until after the hearing on remand.

23 In the event Commission decides to grant the relief requested in this Application,
24 Cornman Tweedy has modified Chairman Gleason's Amendment No. 3 (which was
25 incorporated into Decision 69722) and black-lined the changes that would be necessary to
26 grant the relief requested herein. For the Commission's convenience, a revised and black-
27 lined version of Gleason Amendment No. 3 is attached hereto as Attachment A.
28

1 **B. THE CONDITIONS OF DECISION 66893 HAVE NOT BEEN**
2 **FULFILLED WITH RESPECT TO THE CORNMAN TWEEDY**
3 **PROPERTY**

4 The June 12, 2007, Recommended Opinion and Order in this case erroneously
5 concluded that AWC complied with the conditions of Decision 66893 and granted the
6 requested extension of the compliance deadline, thereby rendering the conditional CC&N
7 unconditional. However, the record is unmistakably clear that AWC never fulfilled the
8 conditions with regard to the Cornman Tweedy property, and the Commission has not
9 modified or excused the conditions by amending Decision 66893 under A.R.S. §40-252.
10 Staff was crystal clear in its Response Brief that AWC did not fulfill the conditions:

11 AWC argues that a strict reading of the CC&N Decision (Decision No.
12 66893) shows that AWC has complied with Decision No. 66893. (AWC
13 Opening Brief at 28). First, even if that were true, Decision 66893 requires
14 timely compliance. Any compliance that may have been achieved in this
15 case was certainly outside the time specified in Decision No. 66893.
16 Second, AWC argues that AWC is free to file any document having to do
17 with "Assured Water Supply" in the extension area in order to satisfy
18 Decision No. 66893. (AWC Opening Brief at 29). Although AWC was
19 able to get a Physical Availability Determination and ADWR-issued
20 Analysis of Assured Water Supply, **Decision No. 66893 calls for AWC to**
21 **file the "Developer's Assured Water Supply for each respective**
22 **development."** (Decision No. 66893 at 7). This specific language suggests
23 separate documents for each development that are procured by the
24 particular developer. **Staff's witness, Steve Olea, testified that "Staff's**
25 **intent was that the certificate of assured water supply and main**
26 **extension agreement should be submitted for the two developments**
27 **that were part of the extension."** (Tr. at 324). The "certificate of assured
28 water supply" referred to by Mr. Olea is a document issued by the Arizona
Department of [Water Resources] to individual developers. **Thus, Staff**
disagrees with AWC's assertion that it has complied with Decision No.
66893. (Staff's Response Brief at 3, lines 10-24) (emphasis added).

There was no evidence presented that refuted Staff's statements above regarding
AWC's non-compliance with the conditions. The evidence in this case is uncontroverted
that AWC never obtained or submitted a certificate of assured water supply or a main
extension agreement covering the Cornman Tweedy property. Thus, it is erroneous to
conclude that AWC fulfilled the conditions with respect to the Cornman Tweedy property

1 when it did not. For the Commission's ease of reference, a copy of Staff's Response Brief
2 is attached hereto as Attachment B. Cornman Tweedy respectfully requests that the
3 Commission acknowledge that AWC did not fulfill the conditions associated with the
4 Cornman Tweedy property, or at a minimum, defer a decision on that matter until after the
5 hearings have been concluded on remand.

6 **C. ADEQUATE NOTICE HAS BEEN PROVIDED TO AWC AND THE**
7 **PUBLIC THAT THE COMMISSION MAY EXCLUDE THE**
8 **CORNMAN TWEEDY PROPERTY FROM AWC'S CONDITIONAL**
9 **CC&N IN THE REMAND PROCEEDING**

10 At the Commission's June 27, 2007, Open Meeting, Chairman Gleason proposed
11 Gleason Amendment No. 1 which would have granted the relief that Cornman Tweedy
12 requested in its Exceptions⁶ by excluding the Cornman Tweedy property from AWC's
13 conditional CC&N area. However, concerns were raised by the Legal Division that
14 Gleason Amendment No. 1 might run afoul of the notice requirements of A.R.S. §40-252
15 for amending a Commission decision. Specifically, the Legal Division was concerned
16 that the denial of the compliance deadline with respect to the Cornman Tweedy property
17 would effect a deletion of that property from AWC's conditional CC&N which would
18 require due process and a proceeding under A.R.S. §40-252. Such concerns, however, are
19 ill-founded. No one would argue that the Commission could have denied in total the
20 extension of the compliance deadlines in this proceeding (as opposed to a proceeding on
21 remand) which would have rendered the conditional CC&N of Decision 66893 null and
22 void, as provided in the express language of the decision itself. If the Commission has the
23 authority to deny a deadline extension request in total, certainly the Commission can deny
24 a request in part (*i.e.*, with respect only to the Cornman Tweedy property). Staff's
25 Response Brief fully supports this argument, notwithstanding the concerns of the Legal
26 Division expressed at the Open Meeting:

27 AWC argues that the original CC&N Decision by the Commission
28 (Decision No. 66893) may not be altered by the hearing that was held on
July 10th and 11th, 2006. (AWC Opening Brief at 22). Due process
requires that prior to a Commission action to alter its decision granting

⁶ Cornman Tweedy incorporates herein by reference its Exceptions filed June 21, 2007.

1 Arizona Water a CC&N, Arizona Water has notice and an opportunity to be
2 heard. This due process requirement reflects the notice and opportunity to
3 be heard provisions in A.R.S. § 40-252 (statute for amending a final
4 Commission Order). Staff's position is that the hearing held on July 10th
5 and 11th, 2006 meets the standards set out in A.R.S. § 40-252. AWC
6 attended the hearing and presented testimony. AWC cross-examined
7 witnesses. AWC knew why the hearing was being held. In this case, the
8 procedural order points out that AWC will have "an opportunity to be heard
9 on its request for additional time for compliance." (Procedural order at 6,
10 March 22, 2006). Given the "null and void" language from Decision
11 66893, it would have been reasonable for AWC to infer that the time
12 extension request may not be granted. The above reasonable inference
13 should have led AWC to the logical conclusion that AWC might lose all
14 or a part of the original extension area. Thus, the Commission may
15 rely on the July 10th and 11th, 2006 hearing to make a determination
16 whether the original CC&N decision (Decision No. 66893) should be
17 altered. Staff's Response Brief (Oct. 6, 2006) at 2-3. (emphasis added).

18 The Staff position on notice as set for above is correct. AWC has had adequate
19 notice in this proceeding that the Commission may deny the requested extension of the
20 compliance deadline for the Cornman Tweedy property, which would have the effect of
21 excluding the Cornman Tweedy property from AWC's conditional CC&N. Moreover, the
22 Commission can provide such additional notice of the broad public interest issues to be
23 addressed in the remand proceeding as the Commission deems necessary by amending
24 Decision 69722.

19 **D. CONCLUSION**

20 The Commission is statutorily empowered to amend or modify a decision before it
21 becomes final, and it should take this opportunity to determine whether it has any legal
22 concerns that *James P. Paul* may limit in any way the Commission's ability to consider in
23 the remand proceeding the public interest issues identified in Decision 69722 and at the
24 Open Meetings held June 27 and July 24, 2007. If so, the Commission should grant the
25 relief requested herein and modify Decision 69722 to ensure that the Commission is not
26 precluded from considering the broader public interest issues in determining whether
27 AWC should hold a CC&N for the Cornman Tweedy property. In granting such relief,
28 AWC would not be prejudiced in any way as it is uncontroverted that there is no request

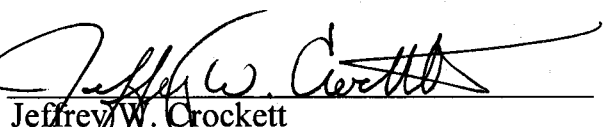
1 for service for the Cornman Tweedy property, there are no current plans for development
2 of the property, and AWC has not constructed any infrastructure whatsoever to provide
3 service to the property. Finally, because the Commission found that the instant
4 proceeding had been narrowed to preclude the consideration of the changed circumstances
5 and the potential exclusion of the Cornman Tweedy property from the CC&N, an
6 amended Decision 69722 would provide the appropriate notice regarding the exclusion of
7 the Cornman Tweedy property in the same manner as the decision does today. It will also
8 resolve any notice challenges to preclude Cornman Tweedy and Staff from asserting their
9 respective positions before the Commission regarding the changed circumstances.

10 If the Commission, however, does not believe that *James P. Paul* applies to limit
11 the issues in the remand proceeding, Cornman Tweedy believes that the denial of this
12 Application will make the Commission's position clear to the parties, thereby precluding
13 any assertion of the applicability of *James P. Paul* to limit the issues considered in the
14 remand proceeding, which would then be conducted consistent with the Commission's
15 expressed wishes set forth in Decision 69722.

16 RESPECTFULLY SUBMITTED this 17th day of August, 2007.

17 SNELL & WILMER LLP.

18
19 By


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One Arizona Center
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Phoenix, AZ 85004-2202
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23 ORIGINAL and 13 copies
24 of the foregoing filed this
17th day of August, 2007 with:

25 Docket Control
26 ARIZONA CORPORATION COMMISSION
27 1200 West Washington Street
28 Phoenix, Arizona 85007

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COPY of the foregoing
hand-delivered this 17th
day of August, 2007 to:

Teena Wolf, Administrative Law Judge
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COPY of the foregoing mailed
this 17th day of August, 2007 to:

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Phoenix, Arizona 85004



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ATTACHMENT A

ATTACHMENT A

THIS AMENDMENT:

_____ Passed _____ Passed as amended by _____
_____ Failed _____ Not Offered _____ Withdrawn

GLEASON PROPOSED AMENDMENT #3

Date Prepared: _____

COMPANY: Arizona Water Company

DOCKET NOs: W-01445A-03-0559

OPEN MEETING DATES: _____

AGENDA ITEM: _____

Page 3, Line 27, INSERT:

"After considering the evidence in this matter, we are concerned that there may not be a current need or necessity for water service in the portions of the extension area that are owned by Cornman. We also recognize that Cornman does not wish to have its property included in Arizona Water's CC&N at this time. We believe that these issues bear further examination and that they may have some relevance to the best interests of the area ultimately to be served.

We also recognize that the proceeding before us is limited to relatively narrow issues: whether, for purposes of compliance, Arizona Water should be granted an extension of time to fulfill the conditions of Decision No. 66893 and whether, in fact, those conditions have been fulfilled. We have concluded that these conditions have been fulfilled with respect to all areas except the portion of the extension area owned by Cornman, and we therefore recognize that, by the terms of Decision No. 66893, Arizona Water holds a CC&N for the extension areas at issue in this proceeding except for the Cornman property.

~~Nonetheless, r~~Regarding the property that is owned by Cornman, we would like an opportunity to consider the overall best interests of the Cornman area and of the public. We will therefore remand the undecided portion of this matter related to the Cornman property~~reopen the record in this matter pursuant to A.R.S. § 40-252 and remand this case to the Hearing Division for further proceedings regarding whether Arizona Water should be granted an extension of time~~continue to hold a CC&N for the Cornman extension area at this time. to

comply with the the conditions of Decision 66893 with regard to the Cornman property. We recognize that Arizona Water, as the grantee under CC&N holder Decision No. 66893, is entitled to appropriate notice and an opportunity to be heard. We therefore officially place Arizona Water on notice that our subsequent proceeding on remand will be for the purpose of considering whether the extension of time as it relates to the Cornman property should be denied which would result in the exclusion of the Cornman property deleted from the CC&N extension granted to Arizona Water by Decision No. 66893. The Hearing Division is directed to conduct further evidentiary proceedings in this matter, including appropriate opportunities for intervention and an appropriate opportunity for Arizona Water to present its case.

While the matter currently before us presented relatively narrow issues, we view the proceeding on remand as broad in scope so that the Commission may develop a record to consider the overall public interest underlying service to the Cornman property that is included in the extension area granted by Decision No. 66893. By identifying these issues and requiring further proceedings, we are not prejudging this matter in any way; instead, we merely desire an opportunity to consider the broader public interests implicated herein."

Page 17, STRIKE lines 27 and 28 (Finding of Fact No. 96)

Page 18, STRIKE line 1

Page 18, STRIKE lines 8-12 (Finding of Fact No. 98)

Renumber Findings of Fact to conform

Page 18, lines 14 and 16, at the end of each sentence INSERT "except for the Cornman property which is to be determined after remand."

Page 18; between lines 16 and 17 INSERT new Findings of Fact to read:

"100. There may not be a current need or necessity for water service in the portions of the extension area that are owned by Cornman, and Cornman does not wish to have its property included in Arizona Water's CC&N at this time. These issues bear further examination and may have some relevance to the best interests of the area ultimately to be served.

101. It is in the public interest to remand this case to the Hearing Division for further proceedings regarding whether Arizona Water should be granted the extension of time to comply with the conditions of Decision 66893 with regard to the Cornman property.~~continue to hold a CC&N for the Cornman extension area at this time.~~

102. As the grantee under Decision 66893, CC&N holder, Arizona Water is entitled to appropriate notice and an opportunity to be heard. Our subsequent

proceeding on remand will be for the purpose of considering whether Arizona Water's request for an extension of time to comply with the conditions of Decision 66893 as it relates to the Cornman property should be granted or denied, thereby bringing about the exclusion of the Cornman property deleted from the CC&N extension granted to Arizona Water by Decision No. 66893.

103. The Hearing Division should conduct further evidentiary proceedings in this matter, including appropriate opportunities for intervention and an appropriate opportunity for Arizona Water to be heard.

104. The proceeding on remand should be broad in scope so that the Commission may develop a record to consider the overall public interest underlying service to the Cornman property that is included in the extension area granted by Decision No. 66893. By identifying these issues and requiring further proceedings, we are not prejudging this matter in any way; instead, we merely desire an opportunity to consider the broader public interests implicated herein."

Page 18, STRIKE lines 22 and 23 (Conclusion of Law No. 3)

Renumber Conclusions of Law to conform

Page 18, between lines 25 and 26, INSERT two new Conclusions of Law to read:

"4. Remanding opening the record in this matter for further hearings related to a determination on the Cornman property pursuant to A.R.S. § 40-252 is in the public interest.

5. This Decision serves as notice to Arizona Water Company that the Commission will remand open the record in this matter for the purpose of considering whether the extension of time to comply with the conditions of Decision 66893 as it relates to the Cornman property should be granted or denied, thereby bringing about the exclusion of the Cornman property from the CC&N extension granted to Arizona Water by Decision No. 66893 pursuant to A.R.S. § 40-252.

Page 18, lines 23 and 28 and page 19, line 2, INSERT at the end of the sentence "except for the Cornman property which is to be determined after remand."

Page 19, between lines 2 and 3 INSERT two new Ordering Paragraphs to read:

"IT IS FURTHER ORDERED that this case is remanded to the Hearing Division for further proceedings regarding whether Arizona Water Company should be granted an extension of time to comply with the conditions of Decision 66893 with regard to continue to hold a CC&N for the Cornman property."~~extension area at this time.~~

IT IS FURTHER ORDERED that Arizona Water Company is hereby on notice that the Commission's subsequent proceeding on remand will be for the purpose of considering whether the extension of time to comply with the conditions of Decision 66893 with regard to the Cornman property should be granted or denied, thereby bringing about the exclusion of the Cornman property~~leted~~ from the CC&N extension granted to Arizona Water Company by Decision No. 66893."

Make all conforming changes.

2024549.3

ATTACHMENT B

ORIGINAL

BEFORE THE ARIZONA CORPORATION C

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

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IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY FOR AN
EXTENSION OF THE SERVICE AREA
UNDER ITS EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
PROVIDE WATER UTILITY SERVICES

DOCKET NO. W-01445A-03-0559

STAFF'S RESPONSE BRIEF

Introduction

Staff has reviewed the closing briefs in the above-captioned matter filed by Arizona Water Company ("Arizona Water" or "AWC") and Cornman Tweedy 560, LLC ("Cornman Tweedy") on September 15, 2006. On September 15, 2006, Staff filed its Opening Brief in this matter. Staff continues to rely on the arguments put forth in its Opening Brief. However, Staff found it necessary to respond to some of the issues raised by AWC in its Post-Hearing Memorandum.

Response to AWC Issues

AWC argues that a contract exists between AWC and the State. In its brief, AWC argues that "contract principles have direct application in this matter." (AWC Opening Brief at 23). The granting of a CC&N does not create a contract between the utility and the State. In *US West Communications, Inc. v. Arizona Corporation Commission*, 197 Ariz. 16, 3 P.3d 936 (App. 1999), US West argued to the Arizona Court of Appeals that the Arizona Corporation Commission ("Commission") had breached a contract with the telecommunications company. The Court pointed out that there was no contractual relationship between US West and the Commission, and that US West has "cited no authority that holds that there is an actual contract or that contract remedies are available under these circumstances." *Id.* at 22, 3 P.3d at 942. The Court went on to point out that in the relationship between US West and the Commission there was no bargained-for exchange and no term to the supposed contract. *Id.* Similarly, in this case, there was no bargained-for exchange between the Commission and AWC.

1 In *Phelps Dodge Corporation v. Arizona Electric Power Cooperative, Inc.*, 207 Ariz. 95, 121,
2 83 P.3d 573, (App. 2004), the Arizona Court of Appeals ruled that the electric competition rules
3 promulgated by the Commission did not impair the contract rights of electric cooperatives. The
4 Court distinguished a CC&N from a traditional contractual relationship. There are no contractual
5 rights "to generate the electricity that is ultimately transmitted and sold for public use" or to
6 "exclusively sell electricity." *Id.* In this case, since there is no contractual relationship between AWC
7 and the Commission, the standard remedies related to contract law are not available. Thus, Arizona
8 Water's arguments that extend contract law principles to Cornman Tweedy's position are not
9 compelling. Similarly, its arguments related to "forfeiture" under contract law cases are without
10 merit in this matter.

11 AWC argues that it has a "vested property right" protected by its CC&N contract with the
12 State. (AWC Opening Brief at 19). As noted above, there is no CC&N contract, and hence no
13 contract right protecting a vested property interest in this case. Monopoly regulation is a public
14 policy, not a property right. See *Tennessee Elec. Power Co. v. Tennessee Valley Authority*, 306 U.S.
15 118, 141 (1939). See also, *City of Tucson v. El Rio Water*, 101 Ariz. 49, 52, 415 P.2d 872, 878 (1966)
16 (expressly declining to determine whether a CC&N is a property right and recognizing that its
17 discussion of the utility's monopoly was focused solely upon arriving at an appropriate valuation for
18 purposes of condemnation). Further, although the *Phelps Dodge* opinion recognized a public service
19 corporation has a "vested interest" under Arizona Constitution Article 15, Section 3, that interest only
20 addresses a utilities rights to construct and operate lines across the State. See: *Phelps Dodge* at 102,
21 83 P.3d at 580. Neither the *Phelps Dodge* or *US West* opinions, nor Article 15, Section 7 state that a
22 utility has a vested property right in a CC&N granted under A.R.S. § 40-281, 282.

23 AWC argues that the original CC&N Decision by the Commission (Decision No. 66893) may
24 not be altered by the hearing that was held on July 10th and 11th, 2006. (AWC Opening Brief at 22).
25 Due process requires that prior to a Commission action to alter its decision granting Arizona Water a
26 CC&N, Arizona Water has notice and an opportunity to be heard. This due process requirement
27 reflects the notice and opportunity to be heard provisions in A.R.S. § 40-252 (statute for amending a
28 final Commission Order). Staff's position is that the hearing held on July 10th and 11th, 2006 meets

1 the standards set out in A.R.S. § 40-252. AWC attended the hearing and presented testimony. AWC
2 cross-examined witnesses. AWC knew why the hearing was being held. In this case, the procedural
3 order points out that AWC will have "an opportunity to be heard on its request for additional time for
4 compliance." (Procedural Order at 6, March 22, 2006). Given the "null and void" language from
5 Decision 66893, it would have been reasonable for AWC to infer that the time extension request may
6 not be granted. The above reasonable inference should have led AWC to the logical conclusion that
7 AWC might lose all or a part of the original extension area. Thus, the Commission may rely on the
8 July 10th and 11th, 2006 hearing to make a determination whether the original CC&N decision
9 (Decision No. 66893) should be altered.

10 AWC argues that a strict reading of the CC&N Decision (Decision No. 66893) shows that
11 AWC has complied with Decision No. 66893. (AWC Opening Brief at 28). First, even if that were
12 true, Decision No. 66893 requires timely compliance. Any compliance that may have been achieved
13 in this case was certainly outside the time specified in Decision No. 66893. Second, AWC argues that
14 AWC is free to file any document having to do with "Assured Water Supply" in the extension area in
15 order to satisfy Decision No. 66893. (AWC Opening Brief at 29). Although AWC was able to get a
16 Physical Availability Determination and ADWR-issued Analysis of Assured Water Supply, Decision
17 No. 66893 calls for AWC to file the "Developer's Assured Water Supply for each respective
18 development." (Decision No. 66893 at 7). This specific language suggests separate documents for
19 each development that are procured by the particular developer. Staff's witness, Steve Olea, testified
20 that "Staff's intent was that the certificate of assured water supply and main extension agreement
21 should be submitted for the two developments that were part of the extension." (Tr. at 324). The
22 "certificate of assured water supply" referred to by Mr. Olea is a document issued by the Arizona
23 Department of Environmental Quality to individual developers. Thus, Staff disagrees with AWC's
24 assertion that it has complied with Decision No. 66893.

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1 RESPECTFULLY SUBMITTED this 6th day of October, 2006.

2
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